



Testimony of

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On the

Reauthorization of the Satellite Home Viewer Extension and Reauthorization Act

Before the

Subcommittee on Communications, Technology, and the Internet

Committee on Energy and Commerce

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Chairman Boucher, Ranking Member Stearns, and Members of the Subcommittee, I appreciate the opportunity to testify today. My name is Charlie Ergen, and I am the Chairman, President, and CEO of DISH Network, the nation's third largest pay-TV provider.

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We are in the middle of a digital transition that is changing the way people watch TV. It's pretty simple: people want to watch what they want, when they want, where they want. As TV evolves, there are some things that no longer make sense for consumers under today's laws:

First, many consumers can't get local news and sports from their home state because of the way local markets are defined;

Second, many rural communities are missing one or more of the four major networks;

Third, many consumers are losing their local stations during disputes over retransmission consent; and

Fourth, consumers suffer when must carry stations have little or no local content.

It is our hope that all of these challenges can be fixed as part of the SHVERA reauthorization this year. The digital age has arrived and the laws need to catch up.

On DMA reform, many of your constituents are being denied access to news, weather, and election coverage from their home state. For example, depending on where a customer lives in Indiana, they may get “local” news from Indiana, Illinois, Kentucky or Ohio. This is an issue in 45 states. The Copyright Office recognized this problem in their report last year. Pay-TV providers should be allowed to bring in a neighboring broadcaster, and consumers should be able to determine what “local” means to them.

With respect to missing network affiliates, DISH provides local service in 178 markets today, reaching 97 percent of households nationwide. This translates into over 1400 local broadcast stations, which is far more than any other pay-TV provider. In most of the remaining markets, one or more of the big four networks is missing. The Copyright Office highlighted this problem in its report. We agree with the Copyright Office that all consumers should have access to NBC, CBS, ABC and FOX programming. If broadcasters won’t invest in their local communities, pay-TV providers should be able to treat a nearby affiliate as the “local” affiliate under copyright and communications law.

On retransmission consent reform, a broadcaster used to negotiate with a single cable company and the leverage was relatively equal. But, today, DISH customers are held hostage, as broadcasters play their local monopoly off multiple pay-TV providers. In 2008 alone, consumers lost programming in approximately 15 percent of our markets because of retransmission consent disputes. This is a huge increase over prior years, and the problem keeps getting worse. Today, stations in seven of our markets remain down because of unreasonable demands from Fisher Communications. Yet broadcasters provide the same content for free on the Internet and to those lucky enough to live within the shrinking areas of digital over-the-air coverage.

Because the broadcasters received billions of dollars of spectrum for free, we think retransmission consent should be free. Failing that, we support the creation of a national retransmission consent rate, which would apply to all broadcasters and all pay-TV providers. Treat a monopoly like a monopoly. Satellite providers already pay a fixed, per-subscriber copyright royalty rate, and we see no reason why a similar concept can't work for retransmission consent. As a second alternative, we support the creation of an actual market. If a broadcaster threatens to drop programming, pay-TV providers should be able to go get a nearby affiliate to fill the gap. Consumers should never have to wonder what happened to Sunday Night Football.

Finally, on must carry, we are forced to carry hundreds of stations today that have little or no local content. This increases our costs, and raises our prices to consumers at a time when consumers need all the disposable income they can get. Must carry stations should be required to earn carriage by airing 20 hours of local programming every week. This is beneficial to consumers and has no harmful effect on broadcasters that invest in their local market.

Each of these four issues can be addressed within the structure proposed by the Copyright Office. Specifically, a unitary compulsory copyright license for all pay-TV providers would give Congress the chance to make sure all consumers get the services they need in a digital world, in a manner that is fair to the copyright holders, broadcasters, cable and satellite. The Copyright Office recognizes that TV has changed fundamentally and incremental changes to outdated rules are not good enough. We encourage you to review their recommendations and act boldly on behalf of your constituents.